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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1922~~ 1923

No. ~~505~~ 109

GUARANTY TITLE & TRUST CORPORATION, RECEIVER OF VUE DE L'EAU COMPANY, A CORPORATION, INTERVENOR, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 21, 1923.

(29,102)

(29,102)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 552.

GUARANTY TITLE & TRUST CORPORATION, RECEIVER OF VUE DE L'EAU COMPANY, A CORPORATION, INTERVENOR, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 14, 1923.

1 In the United States Court of Claims.

No. 34751.

NORFOLK-HAMPTON ROADS COMPANY, a Corporation, Claimant,

v.

THE UNITED STATES OF AMERICA.

I. Petition.

Filed December 7th, 1920.

To the Honorable Judges of the United States Court of Claims:

Your petitioner, Norfolk-Hampton Roads Company, respectfully shows as follows:

I. That your petitioner is a corporation, duly organized and existing under the laws of the State of Virginia, having its principal office in the City of Norfolk, Virginia; that its officers and stockholders are all citizens of the United States and that they and your petitioner have at all times borne true allegiance to the Government of the United States; and have not in any way voluntarily aided, abetted or given encouragement to rebellion against said Government.

2 II. That theretofore and at the times hereinafter mentioned, your petitioner was the sole owner in fee simple absolute of a certain tract or parcel of land which will be designated herein as Pine Grove, situated in Tanners Creek Magisterial District of the County of Norfolk, in the State of Virginia, with the buildings thereon and all riparian and other rights and privileges thereunto belonging, said parcel of land being situated adjacent to the tract of land known as the Jamestown Exposition site on Hampton Roads, Virginia, North of Ninety-ninth Street and Algonquin Street, and being bounded as follows: On the North and West by the waters of Hampton Roads, East by the Eastern line of Maryland Avenue and South by One Hundred and Fourth Street and by property known as the Deep Water Pier property.

The said parcel of land had a frontage on Hampton Roads of about fourteen hundred (1,400) feet measured on the Shore line, and of about twenty-eight hundred (2,800) feet measured on the deep water or Pier-head line. By reason of its location, of its extensive frontage on Hampton Roads, and of the riparian rights belonging thereto, the said land was at the time of the taking thereof for the United States by the President of the United States as hereinafter set out of great value as hereinafter alleged.

III. That petitioner at the time of the taking of said land for the United States by the President of the United States was in possession of the said parcel of land and of every part thereof, and was the sole

owner thereof, having a good title of record to the greater portion thereof and a good title by adverse possession to the remainder thereof; that petitioner had at that time been in actual open, notorious, continuous and uninterrupted, exclusive and hostile possession of the whole of said parcel of land, under claim of title thereto; for more than fifteen years, to-wit, since the year 1899, and that under the statutes of the State of Virginia, in such cases
3 made and provided the title of petitioner to such portion of said parcel of land as it had not already a good title to of record, thereby became and was complete and absolute by adverse possession.

IV. That by an Act of Congress to supply urgent deficiencies in appropriations for the Military and Naval establishments approved June Fifteenth, Nineteen Hundred and Seventeen (Public Number Twenty-Three, Sixty-Fifth Congress), it is among other things, provided:

"Naval Operating Base, Hampton Roads, Virginia: The President is hereby authorized and empowered to take over for the United States the immediate possession and title, including all easements, rights of way, riparian and other rights appurtenant thereto, and including all the rights and properties of railway, electric light, power, telephone, telegraph, water and sewer companies, of the tract of land known as the Jamestown Exposition site, on Hampton Roads, Virginia, and of such lands adjacent thereto as lie north of Ninety-ninth Street and Algonquin Street, the entire property being bounded on the north and west by Hampton Roads and Willoughby Bay, on the East by Boush Creek, and on the South by Ninety-ninth and Algonquin Streets.

"That if said lands and appurtenances and improvements thereof shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five percentum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum, as added to said seventy-five per centum will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.
4 "Upon the taking over of said property by the President as aforesaid, the title to all property so taken over shall immediately vest in the United States."

V. That pursuant to the provisions of said Act the President of the United States by a proclamation under date of June 28th, 1917, did, on behalf of the United States, take title to and possession of the tract of land known as the Jamestown Exposition site on Hampton Roads, Virginia, and certain other lands adjacent thereto, lying north of Ninety-ninth Street and Algonquin Street, including the tract or parcel of land owned by petitioner and hereinabove described, together with the buildings thereon and the riparian rights thereunto belonging, and did at once notify your petitioner to va-

cate the said parcel of land theretofore owned by it as aforesaid by the first day of August, Nineteen Hundred and Seventeen. That on June twenty-eighth, Nineteen Hundred and Seventeen your petitioner in compliance with said demand did surrender possession, control and title to its aforesaid property to the Government of the United States, and pursuant to said order did vacate its said premises on or before said first day of August, Nineteen Hundred and Seventeen; and that thereafter the President of the United States determined that a just compensation for the property of your petitioner hereinabove described was as follows: Namely, Thirty-seven Thousand Dollars for the land and Two Thousand One Hundred and Seventy-five Dollars for the buildings thereon, or a total of Thirty-nine Thousand, One Hundred and Seventy-five Dollars.

VI. That the amount so determined by the President was and is unsatisfactory to your petitioner, which is the person entitled to receive the same. Petitioner, however, was ready and willing to receive and offered to receive from the Government of the United States, pursuant to the provisions of said Act of Congress,
5 seventy-five per centum of the amount fixed by the President as a just compensation for its property taken as aforesaid, and to sue the United States, pursuant to the provisions of the said Act, to recover such further sum as added to said seventy-five per centum would make up such amount as would be just compensation for said property. But the Government of the United States declined to pay to petitioner said seventy-five per cent of the amount so fixed as just compensation for petitioner's said property, or any part thereof, and although petitioner was deprived of the title and possession of its said property at the time aforesaid, it has received nothing whatever by way of compensation therefor.

VII. The reason assigned by the agents of the United States Government, namely, the Board on Compensation for Site Naval Operating Base, Norfolk, Va., for not paying to petitioner the said seventy-five per cent of the amount so fixed as just compensation, was that (as claimed by said agents) as to approximately one-half of said parcel of land, your petitioner had title only by adverse possession, and said agents were not satisfied that such possession had been of sufficient length of time to ripen into a measurably good title; and although said agents recognized that petitioner had a good and unimpeachable title of record to the balance of said property, they nevertheless recommended that no part of the sum fixed as just compensation for said property be paid to petitioner; but that the whole sum be "paid into the United States Court in order that the parties entitled thereto may be in position to submit appropriate evidence in substantiation of their claim to a proper share of the award."

Petitioner does not know what particular United States Court the said agents had in mind in making the said recommendation; but the amount of said award has not nor has any part thereof been paid into the District Court of the United States for the
6 Eastern District of Virginia, in which district petitioner resides and has its principal office and the said property is

located; nor, so far as petitioner knows, has it ever been paid into any Court; nor is there in the aforesaid Act any authority for such procedure. Although the United States Government took from petitioner the title to and possession of said land on June 28th, 1917, and has been in possession thereof ever since, yet said Government has not paid to petitioner or to any one for it, any compensation whatever for the possession or title to said property or any part thereof. No one except the Government of the United States has questioned petitioner's title to the said land, so far as petitioner knows, and since the said land was requisitioned and taken by the United States as aforesaid, no person other than petitioner, so far as petitioner knows, has claimed title to said land or any part thereof, or claimed to be entitled to share in the amount recoverable from the United States Government as just compensation therefor.

VIII. That no action has been taken upon this claim before Congress or any department of the United States Government, except as hereinabove expressly set forth.

IX. That the value of petitioner's said land with the improvements thereon and the riparian rights and appurtenances thereunto belonging, at the time the same was requisitioned and taken by the United States as aforesaid, was the sum of Two Hundred and Twenty Thousand, Four Hundred and Seventy-five Dollars ($220,475.00).

That your petitioner was the sole owner of said land with the improvements thereon and the riparian rights thereto belonging hereinabove mentioned and described, at the time the same was so requisitioned or taken by the United States, and that no assignment or transfer of the said claim or of any portion thereof
7 or interest therein has ever been made and that your petitioner is justly entitled to the sum hereinabove stated as the fair value of said property, to-wit, the sum of Two Hundred and Twenty Thousand Four Hundred and Seventy-five Dollars ($220,475.00), after allowing all just credits and offsets.

Wherefore, your petitioner prays judgment against the United States of America in the sum of Two Hundred and Twenty Thousand Four Hundred and Seventy-five Dollars ($220,475.00) with interest thereon from the date of the rendition of such judgment until the payment thereof. Norfolk-Hampton Roads Company, by D. H. Goodman, President. H. H. Rumble, Attorney for Petitioner, 608-614 Seaboard National Bank Building, Norfolk, Virginia. Rumble & Rumble, of Counsel for Petitioner, 608-614 Seaboard National Bank Building, Norfolk, Virginia.

UNITED STATES OF AMERICA,
Eastern District of Virginia,
City of Norfolk, ss:

Harry L. Lowenberg, being duly sworn, deposes and says that he is Secretary & Treasurer and an officer of Norfolk-Hampton Roads Company, the petitioner named in the foregoing petition; that he has read said petition and that the same is true to the best of his

knowledge, information and belief; that the reason this verification is not made by the petitioner is that the petitioner is a corporation; that the grounds for deponent's belief as to all matters stated in said petition not stated upon his own knowledge are investigations
8 which deponent has caused to be made concerning the subject matter of this action and information acquired by him in the course of his duties as an officer of the said corporation. Harry L. Lowenberg.

Subscribed and sworn to before me, a Notary Public, in and for the City of Norfolk in the State of Virginia, this 6th day of December, 1920. Susie I. Mauck, Notary Public in and for the City of Norfolk in the State of Virginia. (Seal.)

I hereby certify that under the laws of the State of Virginia no tax is required on this seal. Susie I. Mauck. My Commission expires on the 8th day of April, 1922.

II. Traverse.

Filed February 7, 1921.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

9 ## III. Intervening Petition Filed May 31, 1922, by Leave of Court.

In the United States Court of Claims.

No. 34751.

NORFOLK-HAMPTON ROADS COMPANY, a Corporation, Claimant,

v.

THE UNITED STATES OF AMERICA.

Petition of Guaranty Title & Trust Corporation, Receiver of Vue de L'Eau Company, a Corporation.

To the Honorable Judges of the United States Court of Claims:

Your petitioner, Guaranty Title and Trust Corporation, Receiver of Vue de L'Eau Company, a corporation, respectfully presents the following case:

1st. By a decree rendered on April 12, 1921, by the Circuit Court of the City of Norfolk, Virginia, in the chancery suit therein pending, entitled Joseph Grice, who sues on behalf of himself and all other stockholders of Vue de L'Eau Company, a corporation, who

may become parties to this suit and contribute to the cost thereof, against Vue de L'Eau Company, a corporation, and parties unknown, your petitioner was appointed a receiver for Vue de L'Eau Company, a corporation, with directions to forthwith take
10 possession of all of its property of every kind and description, and to proceed forthwith to collect all moneys to which said company may be entitled, especially all money due it from the United States of America as compensation for land formerly owned by said company and taken by the United States of America under authority of an Act of Congress approved June 15, 1917; and said receiver was authorized and directed, either in the name of the company or in its name as receiver for the company, to institute and prosecute any and all legal proceedings necessary or advisable, and to intervene in any proceedings now pending, for the purpose of making claim to and recovering any money or property to which said company might be entitled. A certified and exemplified copy of said decree is filed as a part of this petition, marked Exhibit "A."

2nd. That Vue de L'Eau Company is a corporation duly chartered, organized and existing under and by virtue of the laws of the State of Virginia, with its principal office in the City of Norfolk, Virginia.

3rd. That on June 28, 1917, and for many years prior thereto, it was the owner of a tract of land at Pine Beach in the County of Norfolk, Virginia, known as the "Prize-lot Reserve," containing about five acres, more or less, more particularly described as follows:

That certain rectangular shaped tract of land shown on a plat of survey made for and adopted by the "Board on Compensation
11 for Site, Naval Operating Base, Hampton Roads, Virginia," in October, 1917, fronting on the low water line of Hampton Roads 687 feet, more or less, and running back in a southwardly direction at right angles thereto between parallel lines a distance of 270 feet, more or less; together with all riparian rights appurtenant thereto, and extending as far out in Hampton Roads as the law allows. It being a portion of the property purchased by Vue de L'Eau Company from Edward Jordan and wife, by deed dated February 24, 1871, and is the land shown on a plat made by John F. Dezendorf in July 1873, recorded with the deed from Vue de L'Eau Company to James Y. Leigh and Theodore S. Garnett, Trustees, dated January 2, 1874, admitted to record in the Clerk's Office of the County Court of Norfolk County, Virginia, in deed book 97, pages 432, 433, except such portion thereof as had been washed away by the waters of Hampton Roads as of June 28, 1917.

4th. That by an Act of Congress approved on June 15, 1917 (Public No. 23, 65th Congress), the President of the United States was given certain power and authority therein set forth as follows:

"Naval Operating Base, Hampton Roads, Virginia: The President is hereby authorized and empowered to take over for the United States the immediate possession and title, including all easements, rights of way, riparian and other rights appurtenant thereto, and including all the rights and properties of railway, electric light, power,
12 telephone, telegraph, water and sewer companies, of the tract of land known as the Jamestown Exposition site, on Hampton

Roads, Virginia, and of such lands adjacent thereto as lie north of Ninety-ninth Street and Algonquin Street, the entire property being bounded on the north and west by Hampton Roads and Willoughby Bay, on the East by Boush Creek, and on the South by Ninety-ninth and Algonquin Streets.

"That if said lands and appurtenances and improvements thereof shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum, as added to said seventy-five per centum will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

"Upon the taking over of said property by the President as aforesaid, the title to all property so taken over shall immediately vest in the United States.

13 5th. That on June 28, 1917, acting under the authority of this Act of Congress, the President of the United States of America, on behalf of the United States of America, took title to and possession of the tract of land described in said Act, which included the above described tract of land owned by Vue de L'Eau Company; and on the same day the said President of the United States of America issued and published a proclamation to that effect, in which he notified all persons residing within said tract of land, or owning movable property therein, to vacate the said tract of land, and to remove therefrom all movable property prior to the first day of August, 1917. The Secretary of the Navy was further authorized and directed by the President in this proclamation to take such steps as might in his judgment be necessary for the purpose of conducting negotiations with the owners of property or rights within the said tract of land for the purpose of ascertaining the just compensation to which said owners were entitled, in order that payment therefor might be made in accordance with the provisions of the above mentioned Act of Congress approved June 15th, 1917.

6th. That as before stated the above described property owned by Vue de L'Eau Company was included within the boundaries of the above described tract of land taken by the United States of America, and the said United States of America on June 28, 1917, took title thereto and possession thereof and ousted your petitioner therefrom, and it has ever since then had possession thereof.

14 7th. That on or about November 19, 1917, a Board known as "Board on Compensation for Site, Naval Operating Base, Hampton Roads, Virginia," which had been appointed by the Secretary of the Navy in accordance with the provisions of the President's proclamation of June 28, 1917, found that the fair and reasonable value as of June 28, 1917, of a block of land known as the "Pine Grove Block," which includes the property owned by Vue de L'Eau Company, was $37,000.00 as to the land, and $2,175.00 as

to the buildings thereon, but it made no specific finding as to the value of the property owned by Vue de L'Eau Company, and which comprised nearly the entire Pine Grove Block.

8th. That the amount of said award was and is unsatisfactory to the Vue de L'Eau Company, the person entitled to receive the major part thereof, and to your petitioner as its receiver, and no part thereof has been paid either to the Vue de L'Eau Company or your petitioner as its receiver. That your petitioner is advised that the United States of America has withheld payment for said tract of land because there were doubts in the minds of the representatives of the United States of America as to who was the owner of the property and entitled to receive compensation therefor.

9th. That the value of the above described land, with riparian rights and the appurtenances thereto belonging, at the time it was taken by the United States of America, as aforesaid, was the sum of $220,000.00; that no assignment or transfer of said claim, or
15 any part thereof, or interest therein, has been made except as herein stated; that your petitioner as receiver of Vue de L'Eau Company is justly entitled to the amount herein claimed, namely, $220,000.00, from the United States of America, after allowing all just credits and offsets; that your petitioner and the said Vue de L'Eau Company have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

10th. That by virtue of the provisions of an Act of Congress approved June 15, 1917 (Public No. 23, 65th Congress), your petitioner has the right to sue the United States of America to recover this amount in the manner provided for by Section 145 of the Judicial Code.

11th. Your petitioner further alleges that on December 7, 1920, Norfolk-Hampton Roads Company, a corporation, filed its petition against the United States of America in this Court, in which it claimed to be the owner of the above described tract of land owned by Vue de L'Eau Company, and claimed that it was entitled to receive from the United States of America compensation therefor; to this petition the United States of America has filed a general traverse, and considerable evidence has been taken on the part of Norfolk-Hampton Roads Company. That proceeding has not yet been heard and determined by this Court, but is still pending before the Court.

Wherefore, your petitioner prays that it may be allowed to
16 file this petition, and to intervene in the pending petition No. 34751 filed by Norfolk-Hampton Roads Company, a corporation, against the United States of America, and now pending in this Honorable Court; that the title of Vue de L'Eau Company to the property above mentioned and described may be established and recognized by this Court; that it may be decreed that your petitioner is entitled to receive just compensation for the taking of said property; that a judgment may be rendered in favor of your petitioner against the United States of America for the sum of $220,000.00 with interest thereon as provided by law, together with its reasonable

costs in this behalf expended; and that such other, further and general relief be granted your petitioner as may be just and equitable. Guaranty Title and Trust Corporation, by A. P. Grice, President, Receiver of Vue de L'Eau Company, a Corporation, by E. R. F. Wells, Counsel.

STATE OF VIRGINIA,
City of Norfolk, To wit:

This day personally appeared before me, the undersigned, a Notary Public in and for the City and State aforesaid, A. P.
17 Grice, President of Guaranty Title and Trust Corporation, Receiver of Vue de L'Eau Company, a corporation, the above named petitioner, and being by me first duly sworn, says that he is President of Guaranty Title and Trust Corporation, Receiver, as aforesaid; that he has read the foregoing petition, and that the matters and things therein stated are true to the best of his knowledge and belief.

Given under my hand and notarial seal this 5th day of May, 1921. James Cabell Dabney, Notary Public.

18 **Exhibit A.**

VIRGINIA:

In the Circuit Court of the City Norfolk, on the 12th Day of April, 1921.

In Equity.

JOSEPH GRICE, Who Sues on Behalf of Himself and All Other Stockholders of Vue de L'Eau Company, a corporation, Who May Become Parties to this Suit and Contribute to the Cost Thereof,

vs.

VUE DE L'EAU COMPANY, a Corporation, and Parties Unknown.

This day came Joseph Grice, and by leave of Court filed his verified bill of complaint asking for a receiver of Vue de L'Eau Company, a corporation.

On consideration whereof, it is ordered that Guaranty Title and Trust Corporation of the City of Norfolk, Virginia, be, and it is hereby appointed a receiver for Vue de L'Eau Company, a corporation, with directions to forthwith take possession of all of the property of every kind and description belonging to said company, and to proceed forthwith to collect all moneys to which said
19 company may be entitled, especially all money which may be due it from the United States of America as compensation for land formerly owned by said company and taken and condemned by the United States of America under authority of an Act of Congress approved June 15, 1917.

For the purpose of obtaining possession of the company's prop-

erty and of collecting the moneys to which it may be entitled, the said receiver is hereby authorized and directed, either in the name of the company or in its name as receiver for the company, to institute and prosecute any and all legal proceedings which may be necessary or advisable, and to intervene in any proceedings now pending, or which may hereafter be instituted in any courts, State or Federal, for the purpose of making claim to and recovering any money or property to which said company may be entitled.

The said receiver is directed to hold, subject to the further order of this Court, all property and money belonging to said company which may come into its hands as receiver; and it is hereby empowered to do any and all things necessary, proper or convenient to exercise the powers hereby conferred upon it.

But the said receiver shall exercise no powers under this order until it shall have executed a bond before the Clerk of this Court in the penalty of $50,000.00, payable to the Commonwealth
20 of Virginia, conditioned for the faithful discharge of its duties as such receiver.

A Copy. Teste. Laurence Waring, Clerk, by A. M. Brown, D. C.

I hereby certify that the bond required by the foregoing order has been duly executed by Guaranty Title and Trust Corporation. A. M. Brown, Deputy Clerk of the Circuit Court of the City of Norfolk, Virginia.

STATE OF VIRGINIA,
City of Norfolk, To wit:

I, Laurence Waring, Clerk of the Circuit Court of the said City of Norfolk and State of Virginia, do hereby certify that the foregoing and annexed copy of decree appointing Receiver in the chancery cause of Joseph Grice, &c., complainant, vs. Vue de L'Eau Company, a corporation, &c., defendant, is a true abstract from the Records of said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, this 12th day of April, A. D. 1921, in the 145th year of the Commonwealth of Virginia. (Signed) Laurence Waring, Clerk. (Seal.)

21 STATE OF VIRGINIA,
City of Norfolk, To wit:

I, Allan R. Hanckel, Judge of the Circuit Court of the said City of Norfolk, in the State of Virginia, do certify that Laurence Waring, who hath given the preceding certificate, is Clerk of the said Court, and that his said attestation is in due form.

Given under my hand this 12th day of April, A. D. 1921. (Signed) Allan R. Hanckel, Judge of the Circuit Court of the said City of Norfolk.

STATE OF VIRGINIA,
City of Norfolk, To wit:

I, Laurence Waring, Clerk of the said Court of the said City of Norfolk, and State of Virginia, do hereby certify that Hon. Allan R. Hanckel, whose genuine signature appears to the Certificate above, is the only Judge of the said Court, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, this 12th day of April, A. D. 1921, in the 145th year of the Commonwealth of Virginia. (Signed) Laurence Waring, Clerk. (Seal.)

22 **IV. Argument and Submission of Case.**

On May 22, 1922, this case was argued and submitted on merits by Mr. H. H. Rumble, for the plaintiff, Mr. E. R. F. Wells, for the intervenor, and Mr. Frank B. Crosthwaite, for the defendant.

23 **V. Findings of Fact and Conclusion of Law.**

[Filed June 26, 1922.]

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The plaintiff, the Norfolk-Hampton Roads Company is a corporation, organized and existing under the laws of the State of Virginia, and has at all times borne true allegiance to the Government of the United States. The intervenor in this suit, the Guaranty Title and Trust Corporation, receiver of the Vue de L'Eau Company, is a corporation organized and existing under the laws of the State of Virginia, and is the duly appointed receiver of the said Vue de L'Eau Company, which company has at all times borne true allegiance to the Government of the United States.

II.

On and prior to June 28, 1917 the plaintiff company was in possession of a certain tract or parcel of land designated as Pine Grove, situated in Tanners Creek Magisterial District of the County of Norfolk, State of Virginia, with all riparian and other rights appurtenant thereto, said parcel of land being adjacent to the tract of land known as the Jamestown Exposition Site, on Hampton Roads, Virginia, lying north of Ninety-Ninth Street and Algonquin Street, and being bounded as follows: On the north and west by the waters of Hampton Roads; on the east by the eastern line of Maryland Avenue; and on the south by One Hundred and Fourth Street and

property known as the Deep Water Pier property, said parcel of land containing an area of 9.22 acres, more or less, and having a frontage of approximately 1,400 feet on the shore line.

All of said parcel of land is located within the area described in the Act of Congress approved June 15, 1917, 40 Stat., 207; and said land, with the appurtenances and riparian rights belonging thereto, was taken by the President of the United States on June 28, 1917, under and pursuant to the terms of said Act of Congress, possession and control of said land being surrendered by plaintiff company to the United States on or before August 1, 1917. Thereafter,
24 the President of the United States, acting pursuant to said Act of Congress, determined that just compensation for said parcel of land, including appurtenances and riparian rights belonging thereto, but exclusive of buildings thereon not belonging to the owners of the land, was the sum of $37,000. Said sum was unsatisfactory to plaintiff company, and the payment of 75 per cent of said sum, as provided for by said Act of Congress, was requested by plaintiff company, but the United States would make no payment whatever on said land on account of there being a question as to the validity of said company's title to a portion of said parcel of land, known as the Prize Lot Reserve, consisting of 4.55 acres, more or less, with a frontage of about 690 feet on Hampton Roads.

III.

The said parcel of 9.22 acres of land described in Finding II had for several years immediately prior to the year 1874 belonged to the Vue de L'Eau Company, a company incorporated under the laws of the State of Virginia, being a part of a tract of about 294 acres of land owned by said company; and ownership of said parcel, with the exception of the said portion of it known as the Prize Lot Reserve, was acquired by the plaintiff, the Norfolk-Hampton Roads Company, together with a large acreage of contiguous and adjacent lands, by purchase, about the year 1899, which ownership continued until said parcel of land was taken by the United States Government on June 28, 1917, as aforesaid.

The portion of said parcel of land so acquired by plaintiff company by purchase was 4.67 acres, more or less, with a frontage of approximately 710 feet on Hampton Roads.

IV.

The said Prize Lot Reserve was located approximately midway of the Hampton Roads front of the said parcel of 9.22 acres of land described in Finding II, and for which recovery is sought in this suit. It may be more particularly described as follows, the evidence not furnishing a more definite description of it:

A certain rectangular shaped tract of land shown on a plat of survey made for and accepted by the "Board on Compensation for Site, Naval Operating Base, Hampton Roads, Virginia," in October,
1917, fronting on the low water line of Hampton Roads ap-
25 proximately 690 feet, and running back in a southwardly

direction at right angles thereto, between parallel lines, a distance of 270 feet, containing 4.55 acres, more or less, together with all riparian rights appurtenant thereto, and extending -s far out into Hampton Roads as the law allows.

Said Prize Lot Reserve consisted of lots and streets laid out by the said Vue de L'Eau Company about the year 1873, there being 16 lots fronting on Hampton Roads and 40 lots fronting on streets to the rear of the water front lots. In January, 1874, the said Vue de L'Eau Company executed a deed of assignment for the benefit of its creditors,whereby it conveyed to trustees under the assignment all of its lands and other property except the land embraced in the said Prize Lot Reserve. So far as appears from the land records of said Norfolk County, the only sales or conveyance of lots or lands of said Prize Lot Reserve ever made by said company were the sales and conveyance to different persons, not parties to this suit, under date of August 1, 1873, of seven of said lots, two of which were water-front lots "D" and "H", each having a frontage of 30 feet on Hampton Roads and a depth of 130 feet; and the other five of which were lots Nos. 2, 6, 19, 26 and 35, each having a width of 25 feet and a depth of 130 feet.

V.

After its said assignment for the benefit of its creditors in 1874, the said Vue de L'Eau Company apparently became dormant, no organization in the way of board of directors and officers being kept up; but no formal dissolution of the company or surrender of its charter appears ever to have taken place, and the legal existence of the company has recently been recognized by the Virginia courts by the appointment, by decree of April 12, 1921, of the intervenor in this suit, the Guaranty Title and Trust Corporation, as receiver of said company, with authority to take charge of the property of the company and to prosecute any claim or suits for the protection of its rights and interests.

VI.

No action with reference to the land and lots comprising the said Prize Lot Reserve appears to have been taken by or in behalf of the said Vue de L'Eau Company from the time of the company's said assignment in 1874 for the benefit of its creditors until the appointment of a receiver for the company in April, 1921, as set forth in Finding V, and the receiver's intervention in this suit shortly thereafter, during said year 1921; and the said land and lots were allowed to remain in their former condition and to further develop forest growth thereon.

VII.

The said Prize Lot Reserve was inclosed on its land sides by a large acreage of land belonging to the plaintiff company, purchased by it in 1899, which included the said 4.67 acres immediately surrounding said Prize Lot Reserve, and involved in this suit; and upon

purchasing said lands the plaintiff company, without any right, title or interest, or claim of right, title or interest, in or to the lots or land of said Prize Lot Reserve, and with full knowledge of the fact that it had no claim of right, title or interest in or to any part of said lots or land, deliberately set about trying to acquire title to said lots and land by adverse possession; and in the course of its efforts to so acquire title thereto, the following action was taken:

The plaintiff company, upon its purchase, in 1899, of its large holdings of land inclosing said Prize Lot Reserve on its land sides, took possession of said holdings and from thenceforward to the time of its taking by the Government *on* June, 1917, treated the land of said Reserve as though it belonged to the plaintiff company. It recorded plats of its said property in which the land of said Reserve was included and indicated as a part of the company's holdings. The company's advertising matter issued in 1899 indicated as belonging to the company lands which included the lands of said Reserve, and isad land was included in the company's subdivision known as "Subdivision No. 1, Norfolk on the Roads", a plat of which, stating said subdivision to be the "Property of Norfolk-Hampton Roads Company," was recorded in the County Clerk's office on June 14, 1901. In the development of its said property, streets were opened and graded through the land of said Reserve; timber was cut therefrom and used or marketed by the company; and bulkheads were built by the company in front of the property to protect it from erosion by the waves and tides. Said company also leased an area of its lands to the Jamestown Exposition Company in 1907, including therewith said Prize Lot Reserve land as belonging to plaintiff company, and thereafter, upon the termination of the Exposition Company's lease, said lands were leased by plaintiff company to another tenant, by whom they were occupied for some time. And in general, the land
27 of said Reserve was held out and treated by plaintiff company as being the property of said company. It does not statisfactorily appear who, if anyone, paid the taxes on said land between the years 1874 and 1917.

VIII.

The said 4.67 acres of land acquired by plaintiff, the Norfolk-Hampton Roads Company, in 1899, and constituting a part of the parcel of 9.22 acres for which recovery is sought in this suit, was worth the sum of $35,500.00, when it was taken by the United States on June 28, 1917.

IX.

The portion of the said 4.55 acres of the said Prize Lot Reserve, with the appurtenances and riparian rights belonging thereto, which remained to the said Vue de L'Eau Company after its sale and conveyance of said seven lots in August 1874, was worth the sum of $33,000.00 when it was taken by the United States on June 28, 1917.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as conclusions of law, that the plaintiff, the Norfolk-Hampton Roads Company, is entitled to recover the sum of $68,500.00 for the land of this value described in Findings VIII and IX; and that the intervenor, the Guaranty Title and Trust Corporation, Receiver, is not entitled to recover.

It is therefore adjudged and ordered that the plaintiff, the Norfolk-Hampton Roads Company, recover of and from the United States the said sum of sixty-eight thousand five hundred dollars ($68,-500.00), the judgment to be suspended until said plaintiff shall file with the Attorney General of the United States a good and sufficient deed, approved by the Attorney General, conveying to the United States the said land described in Findings VIII and IX as worth said sum of $68,500.00.

And it is further adjudged and ordered that the petition of the intervenor, the Guaranty Title and Trust Corporation, Receiver, be dismissed, with judgment against said intervenor, in favor of the United States, for such part of the cost of printing the record in this cause as is properly chargeable to the intervenor, the amount thereof to be entered by the Clerk and collected by him according to law.

28 **VI. Judgment of the Court.**

At a Court of Claims held in the City of Washington on the 26th day of June, A. D., 1922, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the plaintiff, and, *and* do order, adjudge and decree that the Norfolk-Hampton Roads Company, as aforesaid, is entitled to recover of and from the United States the sum of Sixty-eight thousand and five hundred dollars ($68,500.), the judgment to be suspended until said plaintiff shall file with the Attorney General of the United States a good and sufficient deed, approved by the Attorney General, conveying to the United States the said land described in Findings VIII and IX as worth said sum of $68,500.00.

And it is further ordered adjudged and decreed that the perition of the intervenor, the Guaranty Title and Trust Corporation, receiver, be dismissed, with judgment against said intervenor, in favor of the United States, for such part of the cost of printing the record in this cause as is properly chargeable to the intervenor, the amount of which is One hundred and five dollars and thirty-nine cents ($105.39) to be collected by the Clerk, as provided by law. By the Court.

VII. Intervenor's Application for and Allowance of an Appeal.

[Filed July 31, 1922.]

The above-named Intervenor, Guaranty Title & Trust Corporation, Receiver of Vue de L'Eau Company, a corporation, conceiving itself aggrieved by a judgment rendered in the above-entitled cause on the 26th day of June, 1922, hereby makes application for, and gives notice of, an appeal from said judgment to the Supreme Court of the United States, and it prays that its appeal may be allowed; and that a transcript of the record, and proceedings and papers upon which said judgment was made, together with the findings of fact and conclusion of law of this Honorable Court, duly authenticated, may be sent to the Supreme Court of the United States. E. R. F. Wells, Attorney for Guaranty Title & Trust Corporation, Receiver for Vue de L'Eau Company, Intervenor. Wm. Leigh Williams, E. R. F. Wells, Counsel for Intervenors.

29 Filed July 31, 1922.

Ordered: That the above appeal be allowed as prayed for on the usual record. George E. Downey, Judge. August 1, 1922.

[Title omitted.]

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusions of law; of the judgment of the Court; of the application of the Intervenor, the Guaranty Title and Trust Corporation, for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Third day of August, A. D., 1922. F. C. Kleinschmidt, Assistant Clerk Court of Claims. [Seal of Court of Claims.]

Endorsed on cover: File No. 29,102. Court of Claims. Term No. 552. Guaranty Title & Trust Corporation, receiver of Vue de L'Eau Company, appellant, vs. The United States. Filed August 21st, 1922. File No. 29,102.